No. 94-108

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In the Supreme Court of the United States

OCTOBER TERM, 1994

ANTHONY COMPARATO, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF JOHN COMPARATO, DECEASED, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a federal tax lien that attached to a taxpayer's interest in property upon the creation of that interest can thereafter be avoided by the taxpayer's renunciation of that interest under state law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 22 F.3d 455. The opinion of the district court (Pet. App. 17a-52a) is reported at 850 F. Supp. 153.

JURISDICTION

The judgment of the court of appeals was entered on April 18, 1994. The petition for a writ of certiorari was filed on July 15, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1985 and 1986, the Internal Revenue Service made assessments against petitioners Anthony and Mildred Comparato in the amount of $254,596 for unpaid federal income taxes, interest and penalties for the 1981-1984 tax years. In 1986, the Service made a further assessment against petitioner Anthony Comparato in the amount of $365,048 for the 1985 tax year. On August 23, 1989, the Service made additional assessments against petitioners Anthony and Mildred Comparato in the amount of $272,406 for the 1974, 1975, and 1976 tax years. Pet. App. 19a-21a. At the time each of these assessments was made, a federal tax lien arose and attached by operation of law to all of the "property and rights to property, whether real or personal, belonging to" the Comparatos. See 26 U.S.C. 6321; 26 U.S.C. 6322.[1]

2. Petitioners Anthony and Mildred Comparato had a son who died intestate on March 30, 1984. While their son was still alive, a malpractice action was brought in his name in New York State Supreme Court against various defendants to recover damages for pain and suffering. After his son's death, Anthony Comparato was appointed administrator of his estate and, in that capacity, pursued the pain and suffering claim. In addition, he made a claim against the same defendants for wrongful death. These claims were ultimately settled for a total of $850,000 (Pet. App. 5a).

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[1] In separate cases, the Tax Court upheld the assessments against petitioners Anthony and Mildred Comparato for the years 1974 through 1976 (*Comparato* v. *Commissioner*, 58 T.C.M. (CCH) 775 (1989)) and for the years 1981 through 1984 (*Comparato* v. *Commissioner*, 65 T.C.M. (CCH) 1890 (1993)). The latter decision had not been entered at the time that the present case was commenced.

In 1989, Anthony Comparato filed a petition in state court to obtain approval of the settlement and to permit payment of various expenses, including legal fees. He further requested that the remaining proceeds of the settlement be distributed to himself and his wife as their son's statutory distributees[2] Before the court acted on the request, the Internal Revenue Service served notices of levy on the attorneys for the estate and on the defendants in the malpractice actions, asserting that the preexisting federal tax liens attached to all property and rights to property of Anthony and Mildred Comparato, including their interests in the settlement proceeds (Pet. App. 5a-6a).

In response, Anthony Comparato advised the state court that he and his wife had sought review of the federal tax assessments (see note 1, *supra*) and requested the state court to direct payment of the settlement funds into an escrow account pending completion of the Tax Court proceedings. The state court permitted distribution of $200,000 from the settlement proceeds to pay attorney's fees and directed the balance of $650,000 to be deposited in eleven separate escrow accounts (Pet. App. 6a).

On March 6, 1990, counsel for Anthony and Mildred Comparato wrote the Internal Revenue Service to express the couple's desire to have the settlement proceeds applied to their outstanding tax indebtedness. The record fails to reveal what, if any, steps the parties took toward this end (Pet App. 24a-25a).

3. On April 10, 1991, more than six years after the death of their son, Anthony and Mildred Comparato

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[2] Under New York law, the parents are designated as the sole distributees of an intestate child's estate. N.Y. Est. Powers & Trusts Law § 4-1.1(a)(4) (McKinney Supp. 1994).

attempted to renounce all of their right, title, and interest in the estate of their deceased son by filing documents entitled "Renunciation of Interest" in state court (Pet. App. 6a-7a).[3] Because these purported renunciations were not filed within the nine-month period provided by state law (see note 3, *supra*), the Comparatos petitioned the state court for an extension. An order to show cause why the extension should not be granted was issued by the state court. That order was served on the IRS, which did not respond to the order (Pet. App. 25a-26a).[4] The state court thereafter permitted the renunciations to be filed out of time (*id.* at 7a).

After the Comparatos filed their reunciation, the state court permitted the couple's remaining children—petitioners Diana Comparato Carlucci and Millicent Comparato—to intervene in the administration of their brother's estate. By law, they would succeed their

[3] New York law permits "[a]ny beneficiary of a disposition [to] renounce all or part of his interest" "within nine months after the effective date of the disposition." N.Y. Est. Powers & Trusts Law § 2-1.11(b)(1) and (2) (McKinney 1981). The time to file and serve a renunciation "may be extended, in the discretion of the court, on a petition showing reasonable cause and on notice to such persons and in such manner as the court may direct." N.Y. Est. Powers & Trusts Law § 2-1.11(b)(2) (McKinney 1981). A renunciation is deemed "retroactive to the creation of the disposition" and it "has the same effect with respect to the renounced interest as though the renouncing person had predeceased the creator or the decedent." N.Y. Est. Powers & Trusts Law § 2-1.11(d) (McKinney Supp. 1994).

[4] The parties agree (Pet. App. 50a-51a) that the United States, which was not a party to the state court action, was not obligated to respond to the show cause order. The order was not entered in a suit commenced under 28 U.S.C. 2410, which permits the United States to be named as a party to state actions to quiet title to property on which the United States claims a lien.

parents as statutory distributees of their brother. See N.Y. Est. Powers & Trusts Law § 4-1.1(a)(5) (McKinney Supp. 1994); Pet. App. 7a.

4. The United States thereafter commenced this action in federal district court seeking (i) to reduce to judgment the tax assessments against petitioners Anthony and Mildred Comparato for the tax years 1974 through 1976, 1981 through 1984 and 1985, (ii) to foreclose the federal tax liens against all of the couple's property and rights to property, including their interests in the settlement proceeds, and (iii) to set aside as fraudulent the conveyances effected by the couple's purported renunciation of their interest in their son's estate (Pet. App. 4a-5a). Because the Tax Court case involving the couple's taxes for 1981 through 1984 was still pending (see note 1, *supra*), the government moved for partial summary judgment with respect to the years (1974 through 1976 and 1985) for which final determinations of tax had been made.

The district court granted the government's motion and entered a final judgment pursuant to Fed. R. Civ. P. 54(b).[5] The court held that (i) Anthony and Mildred Comparato acquired vested interests in the wrongful death and pain and suffering claims as of March 30, 1984,

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[5] Rule 54(b) of the Federal Rules of Civil Procedure provides, in pertinent part, as follows:

> **Judgment Upon Multiple Claims or Involving Multiple Parties.** When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

the date of their son's death, (ii) the federal tax liens attached to those interests as of the dates of assessment and (iii) the Comparatos' subsequent state-law renunciation of their interest in the settlement proceeds did not relate back to defeat the federal tax liens (Pet. App. 8a).

5. The court of appeals affirmed. The court held that Anthony and Mildred Comparato had vested property interests in the wrongful death and pain and suffering claims at the time the federal liens attached and that the Comparatos' interests in those claims were not exempt from levy under federal law (Pet. App. 13a). The court further concluded that the federal tax lien on the Comparatos' property remained effective notwithstanding the couple's subsequent state-law renunciations (*id.* at 14a). The court held that the fact that state law treated the couple's renunciations as effective *ab initio*, to the date of the creation of those interests, did not defeat the federal tax liens that had attached to those interests (*id.* at 15a).

ARGUMENT

The court of appeals correctly held that a state law that permits retroactive renunciation of a property interest cannot defeat a federal tax lien that attached to that interest prior to the renunciation. While, as petitioner notes (Pet. 12), the decision in this case could be said to conflict in principle with the decision of the Ninth Circuit in *Mapes* v. *United States*, 15 F.3d 138 (1994), the *Mapes* decision was entered before this Court decided *United States* v. *Irvine*, 114 S. Ct. 1473 (1994). We doubt that, after *Irvine*, the Ninth Circuit would adhere to its decision in *Mapes*. Further review of the decision in this case is therefore not warranted.

1. Section 6321 of the Internal Revenue Code provides that, "[i]f any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty * * *) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." 26 U.S.C. 6321. The lien imposed by Section 6321 arises upon assessment and continues until the underlying tax liability is satisfied or the statute of limitations expires. See 26 U.S.C. 6322, 6502. Since Section 6321 "creates no property rights but merely attaches consequences, federally defined, to rights created under state law" (*United States* v. *Bess*, 357 U.S. 51, 55 (1958)), a court must first look to state law to determine whether a property right exists against which a lien can be asserted. *Aquilino* v. *United States*, 363 U.S. 509, 512-514 (1960); *Don King Productions, Inc.* v. *Thomas*, 945 F.2d 529, 534 (2d Cir. 1991).

Under the state law applicable to this case, Anthony and Mildred Comparato, as the presumptive heirs and sole statutory distributees of their intestate son, each acquired vested property rights to the wrongful death and pain and suffering proceeds as of the date of their son's death, March 30, 1984. See *In re Wilson's Estate*, 83 N.E.2d 852, 854 (N.Y. 1949); *Alberino* v. *Long Island Jewish-Hillside Medical Center*, 450 N.Y.S.2d 857, 859 (App. Div. 1982) ("cause of action for wrongful death is a property right belonging solely to the distributees of the decedent, and accrues to the distributees and *vests* in them at decedent's death"). When the federal tax assessments were made in 1985, 1986, and 1989, federal tax liens arose and attached to all of the couple's property and rights to property, including their vested interests in the wrongful death and pain and suffering

proceeds. See 26 U.S.C. 6322; *Glass City Bank* v. *United States*, 326 U.S. 265, 267 (1945).

Contrary to petitioners' contention (Pet. 16-17, 18-19), these federal tax liens were not defeated by the subsequent renunciation by Anthony and Mildred Comparato of their interests in their son's estate or by the fact that state law deems those renunciations to be effective *ab initio*, retroactive to the creation of the interests.[6] As the court of appeals correctly concluded (Pet. App. 13a), state law is relevant only in determining whether Anthony and Mildred Comparato had a property interest to which the federal tax lien could attach. Once that determination is made, "federal law determines whether and to what extent those interests will be taxed." *United States* v. *Irvine*, 114 S. Ct. at 1481; *United States* v. *Rodgers*, 461 U.S. 677, 683 (1983) ("once it has been determined that state law has created property interests sufficient for federal tax lien[s] to attach, state law 'is inoperative to prevent the attachment' of such liens"), quoting *United States* v. *Bess*, 357 U.S. at 56-57.

[6] Moreover, petitioners err in contending (Pet. 17-18) that they renounced their interests in the wrongful death proceeds. As the district court noted (Pet. App. 38a-39a), the Comparatos simply renounced their interests in their son's estate. Under New York law, a wrongful death action is *not* an asset of the estate; instead, it belongs to the statutory distributees in their own right. See *George* v. *Mt. Sinai Hosp.*, 390 N.E.2d 1156, 1159 (N.Y. 1979); *Antoine* v. *State*, 426 N.Y.S.2d 917, 921 n.2 (Ct. Cl. 1980). Because Anthony and Mildred Comparato only renounced their interests in their son's estate, and did *not* renounce their interests in the wrongful death proceeds, even if state law principles of renunciation could defeat a federal tax lien, the renunciations in this case did not affect the tax lien that attached to the wrongful death proceeds.

Under federal law, "no property or rights to property shall be exempt from levy other than the property specifically made exempt by [26 U.S.C. 6334(a)]." 26 U.S.C. 6334(c); see *United States* v. *Mitchell*, 403 U.S. 190, 204 (1971). Because 26 U.S.C. 6334(a) does not provide an exemption for the interests of Anthony and Mildred Comparato in the wrongful death and pain and suffering proceeds, the court of appeals correctly concluded that the federal tax liens are effective against those interests.

The fact that state law recognizes the legal fiction under which a valid, subsequent renunciation of this property interest is deemed to be effective *ab initio* does not displace the federal liens that had already attached to this property. As this Court explained in an analogous context in *United States* v. *Irvine*, 114 S. Ct. at 1482, in determining the existence of a property interest, federal law looks to the fact of ownership and "is not struck blind" by state law "legal fiction[s]" designed to ensure that a "disclaimant's creditors are barred from reaching the disclaimed property" (*ibid.*).

In this case, the Comparatos in fact enjoyed ownership of this property interest for six years, during which period the federal tax lien attached to their interests. Federal law is not "struck blind" by New York's legal fiction under which, upon the filing of their renunciations, the Comparatos are deemed never to have owned an interest in the property. See *United States* v. *Wingfield*, 822 F.2d 1466, 1475 (10th Cir. 1987) ("doctrine of relation back under state law cannot be held to subvert the constitutional power to lay and collect taxes"), cert.

dismissed, 486 U.S. 1019 (1988).[7] While New York may provide for the extinguishment of a state creditor's claims by means of a renunciation and the doctrine of relation back, the State's legal fiction has no effect on the determination to be made, under federal law, of whether the taxpayer in fact had a "property" interest (within the meaning of 26 U.S.C. 6321) at the time that the federal liens attached.[8]

[7] Petitioners' reliance (Pet. 19-20) on *Estate of Schiffman*, 430 N.Y.S.2d 229 (Surr. Ct. 1980), in which a renunciation was held effective against a competing state creditor, is thus unavailing.

[8] This Court's decision in *United States* v. *Mitchell*, *supra*, concerning an analogous issue, is instructive here. *Mitchell* presented the issue of whether a married woman living in a community property state is liable for federal income tax on one-half the community income realized during the existence of the marriage even though she exercised her statutory right of exoneration pursuant to state law. The taxpayer in *Mitchell* conceded that her interest in the subject (community) property was vested. 403 U.S. at 203. In rejecting the contention that the right under state law to renounce the community and to place herself in the same position as if it had never existed is substantive, the Court held (*id.* at 204 (citation omitted)):

> Mrs. Mitchell's renunciation "came long after her liabilities for the annual income taxes here in issue had attached." Further, "[t]his right of the wife to renounce or repudiate must not be misconstrued as an indication that she had never owned and possessed her share, for that fact was not denied; but she did have, under the principles of community property, the right to revoke her ownership and possession. . . ."
>
> * * * [A]n exempt status under state law does not bind the federal collector. Federal law governs what is exempt from federal levy.

In this case, Anthony and Mildred Comparato likewise seek to utilize a right of renunciation under state law to shield them from their federal tax liability long after their property interests had

2. The decision in this case correctly applied these principles. We agree with petitioners (Pet. 12, 23), however, that this decision could be said to conflict in principle with the Ninth Circuit's decision in *Mapes* v. *United States*, 15 F.3d 138 (1994). In *Mapes*, the taxpayer's mother died, leaving him one-half of her estate. At the time of his mother's death, the taxpayer and his wife owed the United States approximately $500,000 in assessed taxes and statutory additions to tax. One week after his mother's death, in an effort to prevent the government's lien from attaching to his interest in his mother's estate, the taxpayer renounced his interest in favor of his children. *Id.* at 139.

The government argued in *Mapes* that (i) upon his mother's death, the taxpayer acquired a vested interest in his mother's estate under the applicable local law, (ii) an existing federal tax lien attached at that time to that vested interest and (iii) the taxpayer's subsequent renunciation of his interest did not defeat the existing federal lien. 15 F.3d at 139-140, 141 n.4. The Ninth Circuit rejected the government's submission. While acknowledging that "federal law is controlling on the question of whether Mapes had a lienable interest in his mother's estate," the court concluded that "the fundamental question [is] whether Mapes had any interest in the property, lienable or not." *Id.* at 140. The court held that "[f]or the answer to that question we

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vested. Petitioners' attempt to distinguish the case from *Mitchell* (Pet. 21-22) is therefore unavailing. See also *United States* v. *Solheim*, 91-1 U.S.T.C. (CCH) ¶ 50,108 (D. Neb. 1991), aff'd, 953 F.2d 379, 382 (8th Cir. 1992), where the district court, relying on *Mitchell*, held that a son's renunciations of his interest in a trust established by his father could not relate back to defeat a federal tax lien that had attached to his property interest in the trust.

must look to state law, not federal law." *Ibid.* Noting that the taxpayer's renunciation (one week after his mother's death) was timely and valid under state law, the court held that, because the renunciation relates back to the date of death under state law, the taxpayer never had any interest in the property to which the federal tax lien could attach. *Ibid.* The court concluded that the federal tax lien was therefore ineffective against the taxpayer's interest in his mother's estate. *Ibid.*

The facts of the present case and of *Mapes* differ markedly with respect to the timing of the taxpayers' renunciation of their property interests.[9] Nonetheless, the reasoning of the court of appeals in *Mapes*—that a renunciation under state law can relate back to defeat a federal tax lien that previously attached to the taxpayer's property interest—cannot be reconciled with the reasoning of the decision in this case or with the reasoning of this Court's recent decision in *United States* v. *Irvine*, *supra*. In *Irvine*, which was decided three months after the Ninth Circuit entered its decision in *Mapes*, this Court emphasized that, in determining (under an analogous statutory phrase) whether a taxpayer possesses an interest in "property," federal courts are to look to factual realities and not be "struck blind" by state-law "legal fiction[s]" that permit

[9] In *Mapes*, the renunciation occurred only one week after the interest was created and the Ninth Circuit concluded that the taxpayer had not accepted the benefits of the bequest prior to his renunciation. 15 F.3d at 141. In the present case, by contrast, it is evident that petitioners Anthony and Mildred Comparato sought to enjoy the benefits of the wrongful death and pain and suffering proceeds prior to their purported renunciations some six years later. In particular, they requested the state court to award the proceeds to them and, at one point, proposed using these proceeds to satisfy their federal tax debts (Pet. App. 24a-25a, 51a-52a).

renunciations of ownership to be retroactively effective. See 114 S. Ct. at 1482.[10]

We anticipate that, if the Ninth Circuit were to address a case after *Irvine* that presented facts similar to those of the present case, the court would reach the same conclusion reached by the Second Circuit in this case. We therefore do not believe that a conflict presently exists among the courts of appeals that requires this Court's resolution.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[10] See also *United States* v. *Security Trust & Savings Bank*, 340 U.S. 47, 50 (1950) (relation back cannot "operate to destroy the realities of the situation").